



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/054,257   | 01/22/2002  | Frederick R. Bean    | TN-2239             | 3692             |
| 7590   | 02/07/2008  |                      | EXAMINER            |                  |
| Adan Ayala, Esq.<br>Black & Decker Inc.<br>701 E. Joppa Road, TW-199<br>Towson, MD 21286 |             |                      |                     | NGUYEN, PHONG H  |
| ART UNIT   |             | PAPER NUMBER         |                     |                  |
| 3724   |             |                      |                     |                  |
| MAIL DATE  |             | DELIVERY MODE        |                     |                  |
| 02/07/2008   |             | PAPER                |                     |                  |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/054,257  
Filing Date: January 22, 2002  
Appellant(s): BEAN ET AL.

MAILED  
FEB. 07 2008  
Group 3700

---

Adan Ayala  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 11/14/2007 appealing from the Office action mailed 06/26/2007.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

No amendment after final has been filed.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

|           |                 |         |
|-----------|-----------------|---------|
| 5,778,747 | CHEN            | 07-1998 |
| 5,957,021 | MEREDITH ET AL. | 09-1999 |

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 103***

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claim 13 has been rejected under 35 U.S.C. 103(a) as being unpatentable over Chen (5,778,747) in view of Meredith et al. (5,957,021), hereinafter Meredith.

Chen teaches a chop saw comprising a base assembly and a saw assembly attached to the base having an upper blade guard 84, a plate 88, a lower blade guard 142, and a screw securing the plate 88 to the upper blade guard. See Fig. 1 and 3.

Chen does not teach a first tab. Meredith teaches a first tab 66a for forcing a user to withdraw a fastener a sufficient amount to allow a plate to be pivoted. See Fig. 12 and 13. Therefore, it would have been obvious to one skilled in the art to provide the plate in Meredith a first tab for forcing a user to withdraw the fastener a sufficient amount to allow the plate to be pivoted as taught by Meredith.

Due to the small tolerance between the plate and the lower guard, as the screw is moved a second distance, the lower guard contacts the screw upon the rotation of the lower guard.

It is to be noted that the tab is provided at the right end for the plate 88 in Figs. 1 and 3 in Chen.

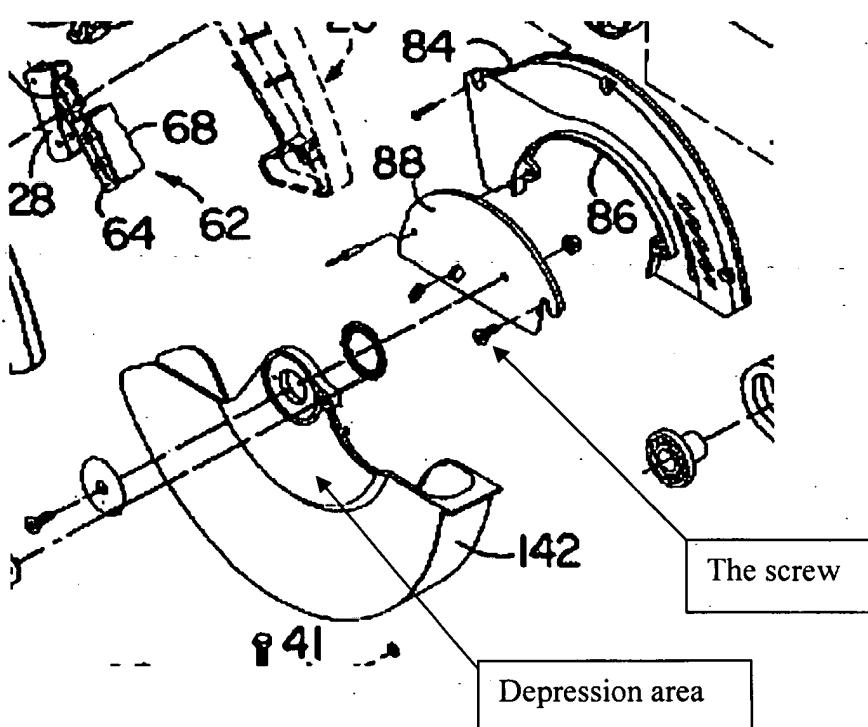
**(10) Response to Argument**

The Applicant argues that Meredith's lower blade guard 42 does not contact screw 69 regardless of the screw's position. This argument is not persuasive. Meredith teaches the use of a tab but not the contact between the screw and the lower blade guard. It appears that the Applicant argues Meredith's teaching individually. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

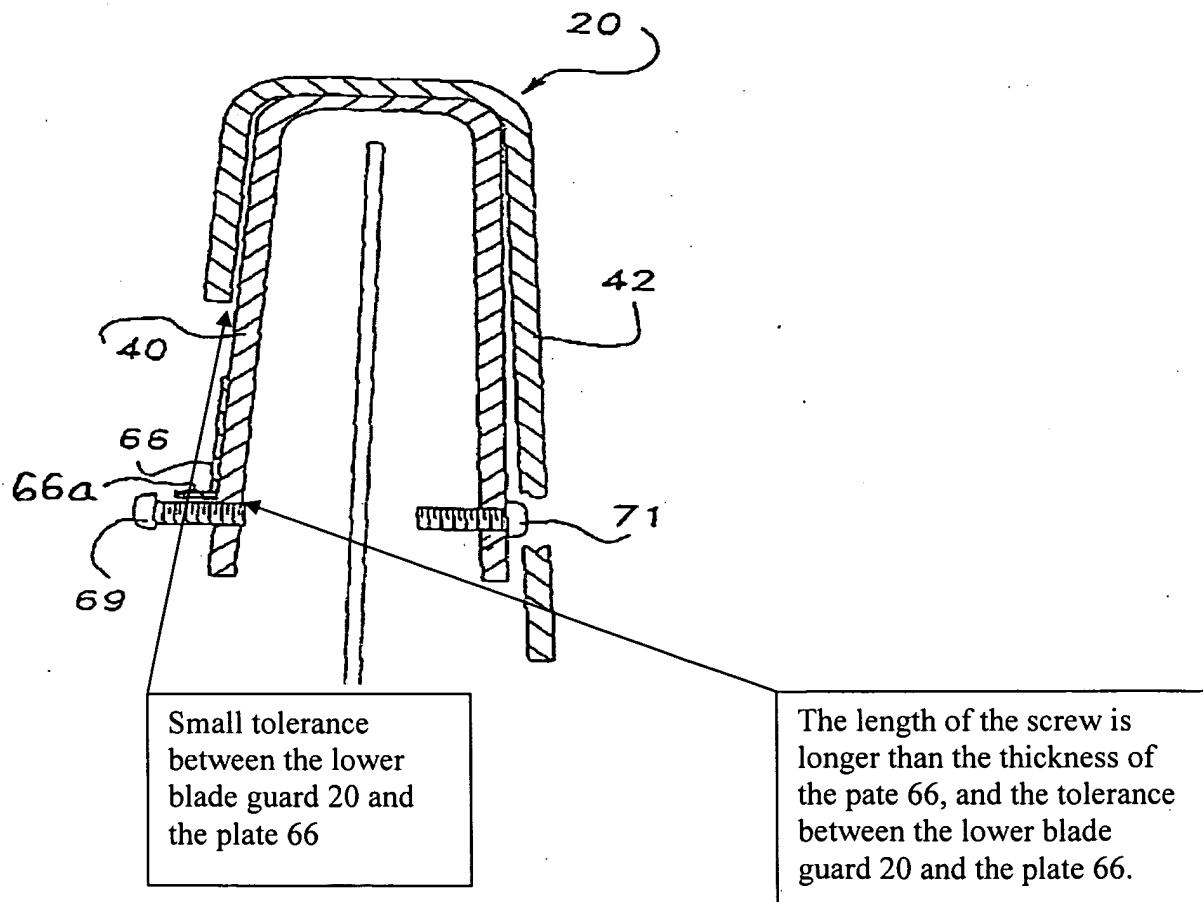
The Applicant argues that the combination of Chen and Meredith does not teach that the lower blade guard contacts the screw upon rotation of the lower blade guard, wherein the lower blade guard contacts the screw upon rotation of the lower blade guard after the screw has been moved a second distance; and the prior art does not show a small tolerance between the plate and the lower guard. These arguments are not persuasive.

In Chen's saw assembly, there is a small tolerance between the rotatable lower blade guard 142 and the plate 88; and the screw has a length that is much longer than the thickness of the plate 88 and the tolerance between the rotatable lower blade guard 142 and the plate 88 (see Figs. 1 and 3, and the first sketch). In reality, the tolerance is between 1/16-2/16 of an inch. Therefore, when the screw is withdrawn to a second distance, the screw contacts the rotatable lower blade guard 142 (see the third sketch below). It is to be noted that for a better view of the tolerance and the length of the screw, please see the second sketch.

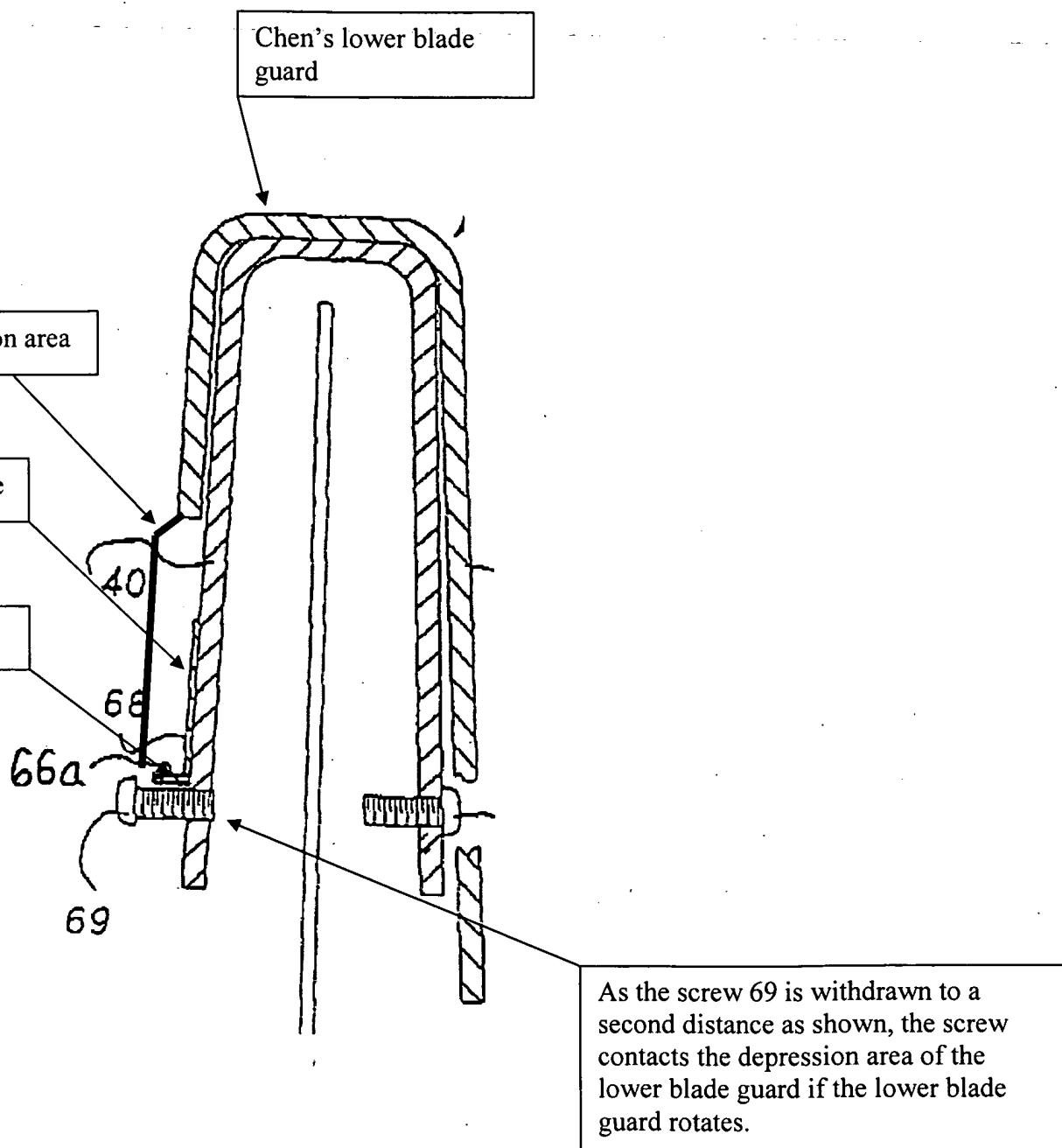
First sketch



Second sketch



Third sketch  
The third sketch shows the plate in Chen's saw assembly being provided a first tab.



The Applicant requests the Examiner to provide documentary evidence showing the existence of the "small tolerance" existing between the plate and the lower guard. There is no need for providing an additional documentary evidence since Meredith already teaches the existence of the "small tolerance" existing between the plate and the lower guard as shown above.

For the above reasons, it is believed that the rejections should be sustained.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

Respectfully submitted,

Phong Nguyen

January 29, 2008

B.A.  
BOYER D. ASHLEY  
SUPERVISORY PATENT EXAMINER

Conferees:

Boyer Ashley, SPE 3724 RA

Allan Shoap, SPRE TC3700 AG

BLACK & DECKER INC.